



# PROGRESS REPORT

## Criminal Code Reorganization Study Committee

May 2010

### LEGISLATIVE MEMBERS:

Senator Keith A. Kreiman, Co-chairperson  
Senator Robert M. Hogg  
Senator Larry McKibben (2007 and 2008)  
Senator Pat Ward (2009 – present)

Representative Kurt Swaim, Co-chairperson  
Representative Clel Baudler  
Representative Rick Olson

### PUBLIC MEMBERS:

Dave Erickson  
Jennifer Miller  
Thomas H. Miller  
Honorable Michael Mullins  
Robert Rigg

Elizabeth Robinson  
Jean Schlichtemeier  
Pamela Summers  
James Tomkovicz

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### AUTHORIZATION AND APPOINTMENT

The Criminal Code Reorganization Study Committee was established by the Legislative Council for the 2007, 2008, and 2009 Legislative Interims to consider proposals for Criminal Code revisions, reorganizations, and updates.



## Criminal Code Reorganization Study Committee

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### I. Committee Proceedings – Overview

The Committee was initially authorized to meet three days during the 2007 and 2008 Legislative Interims. The Committee was subsequently authorized to meet two additional days during the 2008 Legislative Interim and one day during the 2009 Legislative Interim.

In 2008, the Committee retained students from Drake University Law School to develop proposals reorganizing Code Chapter 321J (Operating While Intoxicated) and Code Chapter 124 (Controlled Substances).

### II. September 24, 2007, Meeting

**Presentation by District Judge Michael Mullins.** Judge Mullins, Judicial Branch, developed an Iowa Criminal Statutes Summary Chart and presented it to the Committee with his comments. Numerous changes to the Criminal Code over the years have made the Criminal Code much more complex. It is extremely important during guilty plea proceedings to inform the defendant of the minimum and maximum sentence the defendant could receive for any criminal offense. The Iowa Criminal Statutes Summary Chart is an attempt to encapsulate the three categories of sentencing: 1) requirements, 2) prohibitions, and 3) discretion. The chart does not cover simple misdemeanors except for a few anomalies. The chart does not give guidance for drug-related offenses because many offenders in drug court are under some type of deferred prosecution program. A judge is not involved in Board of Parole decisions but may write a letter about a defendant to the board.

**Presentation by Mr. Paul Stageberg.** Mr. Stageberg, Administrator of the Division of Criminal Juvenile Justice and Planning (CJJP) of the Department of Human Rights, briefed the Committee about the role of CJJP. The CJJP maintains data and statistics about prisoners and prison admissions and provides a prison population forecast. The CJJP has provided statistics to the Governor's Task Force on the Overrepresentation of African-Americans in Prison.

**Committee Discussion.** Co-chairperson Swaim envisioned the Committee possibly reviewing three areas: 1) substantive criminal law, 2) sentencing issues, and 3) special issues such as the overrepresentation of African-Americans in prison and the 2000-foot rule for sex offender residences. Co-chairperson Kreiman and Representative Baudler emphasized that public safety is the paramount issue when reviewing the Criminal Code. Ms. Elizabeth Robinson, Board of Parole, concurred public safety is paramount and stated she has concerns about the applicability of the "special sentence" for certain offenders. Professor James Tomkovicz, University of Iowa College of Law, commented that the Committee should focus on substantive criminal law and sentencing and noted that clarity is essential when redrafting the Criminal Code. Mr. David Erickson, Department of Corrections, commented that the effects of mandatory minimums and whether more discretion should be given to judges should be reviewed, as well as the effectiveness of drug courts and mental health courts. Mr. Thomas H. Miller, Attorney General's Office, stated the goal of the Committee should be to make Iowa a safer state and to determine how resources are allocated to meet this goal. Representative Olson commented on the need to balance public safety with justice. Senator McKibben stated the Committee should first focus on placing the criminal laws into one portion of the Code and to clear up the maze of criminal laws throughout the



Code. Ms. Jennifer Miller, County Attorney's Association, commented the Code needs to be clarified. Co-chairperson Kreiman envisioned the Committee reorganizing the Criminal Code into one volume of the Code to enhance readability. He also stated the Committee should eliminate outdated provisions and possibly review the Criminal Code substantively to ensure proportionality and to provide maximum flexibility.

### III. October 30, 2007, Meeting

**Presentation by the Department of Corrections.** Mr. Fred Scaletta, Public and Media Relations Director, Department of Corrections (DOC), summarized the impact of sentencing on offenders committed to the custody of the DOC. In accordance with Code Chapter 903A, an offender can earn time to reduce the maximum sentence for their offense. He also noted that an offender serving a category "B" sentence must serve 70 percent of the sentence before earned time is applied to reduce the remainder of the sentence. He noted that if an offender is serving a category "A" sentence, the offender earns 1.2 days for every day served in prison. He also informed the Committee that an offender will earn 1.2 days for every day served in jail prior to entering prison regardless of whether the offender is serving a category "A" sentence or category "B" sentence. Mr. Michael Savala, General Counsel, DOC, commented the DOC can take away earned time if an offender violates any of the 43 rules established by the DOC.

**Discussion.** Co-chairperson Kreiman asked if rule violations are referred to the local county attorney for prosecution. Mr. Savala responded that if the violation is criminal, then the violation is referred to the local county attorney for prosecution. Representative Baudler asked how the DOC calculates jail credit. Mr. Scaletta stated the county sheriff certifies the number of days an offender was confined in jail, and then the DOC calculates the credit based upon the sheriff's certification. Committee discussion ensued about offender mental illness. The Committee was informed that 42 percent of all offenders have a mental illness and 26 percent of all offenders have a severe mental illness.

**Code Editor.** Ms. Leslie Hickey, Iowa Code Editor, Legislative Services Agency (LSA), urged the Committee to delay the effective date of any proposed legislation reorganizing the Criminal Code so any potential mistakes or omissions can be corrected prior to implementation. She also stated the Code has doubled in size since the last Criminal Code reorganization in 1976. She emphasized reorganizing the Criminal Code has unique challenges that affect codification, including construing vague criminal statutes against the state (prosecution), prospective application of new or enhanced penalties, retroactive application of reduced penalties, and general savings clauses that preserve the meaning of criminal statutes that are a continuation of old law.

**Drug Court Presentation.** Judge Glenn Pille, District Judge, Fifth Judicial District, stated that drug court is an intensive supervision program that diverts offenders from prison. He emphasized that drug court would not work unless the county attorneys, judges, and defense attorneys agree to work together to help offenders. He also stated offenders in the Drug Court Program agree to forego certain due process rights, thus, if an offender violates the rules of the program the judge has the authority to send the offender to jail immediately. Judge Richard Meadows, District Judge, Eighth Judicial District, stated drug court is most effective targeting offenders who are drug addicts that become criminals to fuel their drug habit, not criminals who become drug addicts. Judge Fae



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Hoover-Grinde, District Judge, Sixth Judicial District, emphasized the mental health component of drug court in the Sixth Judicial District. She also stated that the majority of offenders in drug court in the Sixth Judicial District are addicted to crack cocaine.

**Iowa Trial Lawyers Presentation.** Mr. Jake Feuerhelm and Mr. U. J. Booth, Iowa Trial Lawyers Association, asked the Committee to review areas of the Criminal Code relating to robbery, burglary, controlled substances, and driver's license suspension. Mr. Booth urged the Committee to review areas of the law where middle ground can be achieved.

**Committee Discussion.** The Committee agreed to divide future work into four distinct subcommittees. The first subcommittee will work on foundational issues such as definitions, culpability, defenses, and inchoate crimes (crimes which lead to other crimes). The second subcommittee will review proposals reorganizing the Criminal Code. The third subcommittee will work on sentencing classification and the placement of internal references relating to sentencing in the Code. The fourth subcommittee will review proposals relating to specific crimes.

### IV. June 3, 2008, Meeting

**Criminal Justice Information System Integration System (CJIS).** Mr. David Meyers, Project Manager, CJIS, presented an overview of CJIS. CJIS was formed in response to the need for criminal justice agencies to integrate information systems in order to share critical data, documents, images, and key transactions. Each criminal justice agency inputs decisions regarding a person or case into a computer system that was developed in isolation from other agencies involved in a criminal case. The goal of CJIS is to allow independent computer systems to share common data concepts and to more easily communicate in an accurate and timely manner. As CJIS developed, the persons working on the system realized each reference to a criminal charge must be more uniform to facilitate the exchange of information between criminal justice agencies. In order to make the information more uniform, CJIS must identify each criminal offense in the Iowa Code by Code section. CJIS culled the Criminal Code and identified approximately 3,000 criminal offenses which will be used by criminal justice agencies to identify a particular criminal charge in CJIS.

**Criminal Code Reorganization — Other States.** Mr. Joe McEniry, Senior Legal Counsel, LSA, presented an overview of Criminal Code reorganizations and reviews occurring in other states. Illinois launched the Criminal Law Edit, Alignment and Reform (CLEAR) Initiative in 2005 to review and reorganize the Criminal Code of Illinois. CLEAR submitted a bill request embodying the reorganization plan with the Illinois Legislature. Senate Study Bill 110, currently before the California Legislature, would establish a sentencing commission and grant the sentencing commission the authority to modify criminal penalties in the California Criminal Code. Some states have established a sentencing commission but included a sunset on the commission. Another option to consider for Iowa would be to codify a criminal law committee much like Iowa's Public Retirement Committee codified in Code Section 97D.4.

**Committee Discussion.** Committee discussion ensued about the four established subcommittees that will meet during the next few months and begin reporting later in the fall to the full Committee. Co-chairperson Kreiman stated that the Foundational Subcommittee will be chaired by Professor



Tomkovicz (University of Iowa) and will review definitions, culpability issues, defenses, and inchoate (conspiracy) crimes. The Reorganization Subcommittee will temporarily be chaired by Co-chairperson Kreiman and will review proposals to reorganize the Criminal Code and to enhance the readability of the Code. The Specific Crimes Subcommittee will be chaired by Representative Olson and will review proposals related to specific crimes in the Criminal Code by identifying potential gaps, adding criminal offenses, removing duplicative offenses and penalties, and reviewing proportionality. The Sentencing Subcommittee will be chaired by Judge Mullins and will review sentencing structures in other states, including the establishment of a sentencing commission.

### V. September 8, 2008, Meeting

**Prison Population Disparity.** Representative Wayne Ford stated that Iowa was first in the nation in 1988 for incarcerating juveniles who are minorities. He further stated that many factors have contributed to the current high incarceration rate for African-Americans in Iowa including numerous laws enacted over the previous 20 years. He noted that gang participation and crack cocaine laws have disproportionately impacted the African-American community. He stated that the minority impact legislation, 2008 Iowa Acts, Chapter 1095 (H.F. 2393), is a good first step and will at least provide information to legislators about the potential impact of legislation on minority incarceration rates prior to enactment.

**Minority Impact Statements.** Ms. Beth Lenstra, Senior Fiscal Analyst, LSA, stated that LSA is in the process of developing protocols for the minority impact statement. In developing such protocols, LSA has met with the Criminal and Juvenile Justice Planning Division of the Department of Human Rights, the Department of Corrections, the Department of Public Safety, the Department of Transportation, and the Department of Justice. Minority impact information is difficult to ascertain for persons incarcerated in jails.

**Sentencing Commissions Annual Conference.** Mr. McEniry and Ms. Lenstra attended the annual conference of the National Association of State Sentencing Commissions. Mr. McEniry stated that 23 states have established sentencing commissions and there are many variations. Some sentencing commissions are established by states based upon the principles of fairness, equity, or sentencing certainty. Most sentencing commissions are nonpartisan, have a well-defined mission, and have a strong research component.

**Criminal Justice Systems Initiative (CJIS).** The Honorable Michael Newmeister, a Senior District Associate Judge, stated CJIS has identified 2,700 criminal offenses in the Iowa Code for the purpose of establishing a seamless electronic database for users to electronically transfer uniform information about criminal offenses. He stated during the process of identifying the criminal offenses, CJIS has compiled a list of proposals to improve the Criminal Code. He suggested the following: clarify the jurisdiction of magistrates; clearly identify simple misdemeanors; place criminal offenses in separate paragraphs within the Code; clarify the criminal offense of fraudulent practice; and improve communications with the Code Editor.



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### Subcommittee Updates

- **Sentencing Subcommittee.** Subcommittee Chairperson Mullins stated the Sentencing Subcommittee has met one time and noted the subcommittee is interested in further reviewing sentencing commissions but is not interested in establishing sentencing guidelines.
- **Specific Crimes Subcommittee.** Subcommittee Chairperson Olson stated the Specific Crimes Subcommittee met one time and heard from the various stakeholders in the criminal justice system.
- **Reorganization Subcommittee.** Co-chairperson Kreiman stated the Reorganization Subcommittee is studying the reorganization of the penalty provisions in Code Chapter 124 (Controlled Substances) and 321J (Operating While Intoxicated).
- **Foundational Provision Subcommittee.** Co-chairperson Swaim stated the Foundational Provision Subcommittee has been meeting monthly about portions of the Model Penal Code with Subcommittee Chairperson Tomkovicz.

## VI. January 15, 2009, Meeting

### Subcommittee Updates

- **Foundational Provision Subcommittee.** Co-chairperson Swaim stated the subcommittee is continuing its work comparing the foundational provisions in the Iowa Criminal Code with the Model Penal Code foundational provisions. Committee discussion ensued about developing a general statute relating to attempts of a criminal act and other criminal law provisions.
- **Sentencing Subcommittee Recommendation.** Subcommittee Chairperson Mullins stated the subcommittee unanimously voted to further study the establishment of a public safety advisory committee that would systematically review criminal laws in this state. Committee discussion centered on the membership and duties of a public safety advisory committee. The Committee unanimously agreed that the subcommittee should further review the establishment of such a committee.
- **Reorganization Subcommittee Recommendation.** The committee discussed reclassifying some criminal offenses that are currently nonscheduled offenses to be simple misdemeanors. The committee learned many of the nonscheduled offenses are traffic-related offenses. The committee agreed to request the Judiciary Committee of both chambers draft a bill reclassifying some nonscheduled traffic-related offenses as simple misdemeanors. Ms. Erica Nichols, a student at Drake University Law School, presented to the committee a proposal rewriting Code Chapter 321J (Operating While Intoxicated). Committee discussion proceeded about the proposal. The committee agreed to request the Judiciary Committee of both chambers draft a bill rewriting Code Chapter 321J. The committee also agreed that the subcommittee continue work on a proposal rewriting Code Chapter 124 (Controlled Substances).
- **Specific Crimes Subcommittee.** The subcommittee delayed meeting until certain work of the other subcommittees is complete and thus did not provide a report.



**Limited Jurisdiction Task Force.** Co-chairperson Kreiman reported that the task force was created by the Iowa Supreme Court and had many recommendations about the office of magistrate and magistrate jurisdiction. He further reported the Legislature is awaiting the final approval of the task force recommendations by the Judicial Council.

**Other Committee Discussion.** The Committee agreed to request a change to the rules of the House and Senate that would require legislation containing a criminal penalty be reviewed by the Judiciary Committee of each chamber prior to enactment. The Committee also agreed to request the Legislative Council permit the Committee to continue the work of the Committee for two additional years.

### VII. May 21, 2009, Meeting

**Foundational Provision Subcommittee Update.** Subcommittee Chairperson Tomkovicz updated the Committee about the status of the subcommittee's work. He informed the Committee that the subcommittee has taken final action on the following foundational criminal provisions: acts, mental state, mistake of fact, inchoate crimes, and attempts. The subcommittee has draft proposals for intoxication and insanity defenses and the foundational provisions for diminished capacity, entrapment, duress, self-defense of others, and self-defense of property have not been completed. He stated the "mental state" provisions will have the greatest impact on the Criminal Code and will require the most work. The "mental state" provisions involve purpose, knowledge, recklessness, and negligence. Mr. Miller noted that some offenses do not involve a "mental state" but are strict liability offenses including traffic offenses.

**Reorganization Subcommittee.** The Committee discussed whether the subcommittee should review and reorganize sex offenses to make the prosecution of sex offenses less complicated. The Committee agreed to further discuss this item with Professor Rigg, Drake University Law School.

**Sentencing Subcommittee.** The Committee agreed to further review the establishment of a public safety advisory board to review criminal provisions. The Committee discussed the duties, membership, and authority of such a board. The Committee agreed that the subcommittee should begin its work in Summer 2009 and discussed drafting a specific proposal for consideration by the General Assembly, 2010 Session.

**Specific Crimes Subcommittee.** The Committee discussed having the subcommittee begin work on reviewing criminal offenses in the Code to determine the proper "mental state" provision to apply to the offense.

**Sex Offender Registry Bill—Senate File 340.** The Department of Public Safety discussed the sex offender registry changes contained in 2009 Iowa Acts, S.F. 340, and the implementation of such changes. The department also informed the Committee that each of the 5,000 offenders on the registry will be notified by mail of the new registry requirements and that the department will be holding training sessions with local county sheriffs' offices around the state about the new requirements.



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### VIII. September 9, 2009, Meeting

**Specific Crimes Subcommittee.** Subcommittee Chairperson Olson presented seven proposals adopted by the subcommittee for consideration by the Criminal Code Reorganization Study Committee. The discussion and proposals by the full Committee can be summarized as follows:

- The Committee discussed creating a new robbery in the third degree criminal offense but did not reach consensus about how to classify the new offense.
- The Committee discussed prescription drugs and contraband under Code Section 719.7 but agreed the issue required more study.
- The Committee recommended allowing the expungement of an underage possession of alcohol offense in violation of Code Section 123.46 if the defendant incurs no other criminal offenses other than traffic offenses and the defendant is at least 21 years of age.
- The Committee recommended providing authority for a judge to extend a defendant's probation period if a violation of probation has been established.
- The Committee recommended adding the term "recklessly" to the class "D" felony offense for intimidation with a dangerous weapon in violation of Code Section 708.6.
- The Committee recommended classifying any escape from custody in violation of Code Section 719.4(2) as a class "D" felony.
- The Committee recommended exempting from the definition of forcible felony under Code Section 702.11 an assault without intent to inflict serious injury but which results in serious injury in violation of Code Section 708.2(4).

**Sentencing Subcommittee.** The Sentencing Subcommittee recommended the creation of a public safety advisory board within the Division of Criminal and Juvenile Justice Planning of the Department of Human Rights. Subcommittee Chairperson Mullins, Co-chairperson Kreiman, and Representative Baudler outlined the recommendation. The membership of the board would be from the members of the Criminal and Juvenile Justice Planning Advisory Council. The duties of the board would include analyzing the impact of current and proposed Criminal Code provisions on disparity, truth in sentencing, victims, proportionality, sentencing procedures, costs, and best practices. The recommendation also would require the board to review the collection of correctional data and to provide expertise and advice in formulating fiscal, correctional, and minority impact statements. The recommendation requires the board to be politically neutral. The subcommittee recommendation was approved by the full Committee.

**Reorganization Subcommittee.** Drake Law School students Mr. Scott Wadding and Mr. Rico Cordova presented a draft proposal reorganizing Code Chapter 124 (Controlled Substances). Committee discussion ensued about simplifying the Code chapter and placing the criminal penalties into one Code section, but the Committee did not act upon the draft proposal.

**Foundational Provision Subcommittee.** Mr. Miller presented the recommendations of the Foundational Provision Subcommittee. The recommendations included provisions related to the state of mind of a defendant (mens rea), the act requirement (actus reus), attempts, conspiracy, solicitation, intoxication, insanity, mistake, and liability for others. Committee discussion centered





around the complexity of the provisions and the need for additional input and study from various stakeholders in the criminal justice system. The recommendations were referred back to the Foundational Provision Subcommittee for further study and review.

### IX. January 14, 2010, Meeting

**Sentencing Subcommittee – Public Safety Advisory Board.** The Honorable Michael Mullins, Chairperson of the Sentencing Subcommittee, noted that the Sentencing Subcommittee recommendation makes changes to the membership and duties of the Criminal and Juvenile Justice Planning Advisory Council and creates the Public Safety Advisory Board to be comprised of members of the council as determined by the council. He stated the duties of the board will be to review and make recommendations relating to current sentencing provisions and to provide a report to the General Assembly about these proposed legislative changes. The Committee adopted the recommendation of the Sentencing Subcommittee.

**Specific Crimes Subcommittee – Additional Recommendations.** Chairperson Rick Olson reported that the Specific Crimes Subcommittee met again on October 29, 2009, and made the following recommendations in addition to the recommendations already approved by the subcommittee during the September 2, 2009, meeting:

- Create a robbery in the third degree offense that is a nonforcible class "D" felony.
- Add expungement provisions to the Possession of Alcohol under the Legal Age offense in Code Section 123.47 that are similar to existing expungement provisions for Public Intoxication under Code Section 123.46(5).
- Separate the criminal offense of "Simulated Public Intoxication" from "Public Intoxication" in Code Section 123.47(2).
- Repeal Code Section 709.7—Detention in a Brothel.
- Move Abuse of a Corpse provisions in Code Section 709.18 (2) and (3) to Code Chapter 714 (Assault).
- Repeal Code Section 321.406—Cowl Lamps.
- Develop a consistent definition for "serious injury" under Code Sections 235B.2, 321.261, 321.482A, 321J.1, 462A.2, and 702.18.
- Develop a consistent definition for "child" throughout the Code.

**Recommendations.** Representative Rick Olson, Chairperson of the Specific Crimes Subcommittee, discussed all the following recommendations of the Specific Crimes Subcommittee which were presented to the Committee in bill draft form:

- Robbery in the third degree (nonforcible alternative). Under this recommendation, a person commits robbery in the third degree if, while perpetrating a robbery, the person commits a simple assault as defined in Code Section 708.2, Subsection 6, upon another person. The recommendation classifies this offense as a class "D" felony and exempts this new crime from the definition of a forcible felony, allowing



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the person to be eligible for a suspended or deferred sentence or a deferred judgment.

- Expunging certain criminal convictions. Under this recommendation, a person two years after a conviction for public intoxication, the person may petition the court to expunge the record of the conviction if the person has not had other criminal convictions other than simple misdemeanor violations of Code Chapter 321, relating to motor vehicles and laws of the road, during that two-year period. The recommendation also establishes a similar expungement provision for possessing, purchasing, or attempting to purchase alcohol under legal age and for similar local ordinances. Committee members expressed concern about the potential for receiving more than one expungement.
- Simulated public intoxication. This recommendation transfers the criminal offense of simulated public intoxication in a public place to another provision within Code Section 123.46.
- Extension of probation period. This recommendation provides that a judge may extend a period of probation for up to one year including one year beyond the maximum period if a probation violation has been established. The recommendation also requires the court to inform a defendant at the time of sentencing that the defendant's probation may be extended if a probation violation occurs. Judge Mullins expressed his concern about this latter requirement on the court and stated that this provision may be used in a postconviction relief action if the court fails to inform the defendant. The Committee agreed to strike the requirement the court to inform the defendant that the defendant's probation may be extended. The Committee also agreed to make the proposal applicable to any crime committed on or after July 1, 2010.
- Intimidation with a dangerous weapon. This recommendation modifies the elements to prove a class "D" felony offense of intimidation with a dangerous weapon by adding a mens rea component to the offense. Under the recommendation, a person commits a class "D" felony intimidation with a dangerous weapon if the person "recklessly" performs the actions required to be convicted of such an offense.
- Escape or attempted escape from custody. This recommendation equalizes the criminal penalty for all escapes or attempted escapes from custody. A person convicted, charged, or arrested for the commission of any criminal offense who intentionally escapes or attempts to escape from a detention facility, community-based correctional facility, or institution or from the custody of any public officer or employee or anyone else who has custody of the person commits a class "D" felony.
- Assault causing serious injury. This recommendation provides that a person who commits an assault without the intent to inflict serious injury but who causes serious injury commits a class "D" felony. The recommendation exempts this modified assault provision from the definition of a forcible felony under the Code



allowing a person convicted of this crime to be eligible to receive a deferred judgment or a suspended or deferred sentence.

- Definition of serious injury. This recommendation modifies the definition of “serious injury” in Code Chapters 235B (dependent adult abuse), 321J (operating-while-intoxicated offenses), and 462A (water navigation regulations) and makes this definition consistent with the definitions of “serious injury” in Code Section 708.18 applicable to the Criminal Code.
- Cowl lamps. This recommendation repeals Code Section 321.406 limiting the use of cowl lamps on motor vehicles to no more than two such lamps emitting amber or white light without glare.
- Detention in a brothel. This recommendation repeals the criminal offense of detention in a brothel. A similar criminal offense already exists in Code Chapter 710A (human trafficking).
- Abuse of a corpse. This recommendation transfers certain “abuse of a corpse” provisions from Code Section 709.18 to Code Chapter 708 (assault) and creates new Code Section 708.14 (sexual abuse of a corpse).

With the exceptions noted, the Committee adopted all of the foregoing recommendations of the Specific Crimes Subcommittee. The Committee did not take action to develop a consistent definition of “child” throughout the Code.

### **X. Continuation of Committee**

Committee members agreed to request to continue this interim committee for one additional year during the 2010 Legislative Interim.

### **XI. Actions Taken by the General Assembly on Recommendations**

The following recommendations were considered by the General Assembly and the indicated actions were taken:

1. Reclassification of some nonscheduled traffic-related offenses as simple misdemeanors. This recommendation was enacted in 2010 Iowa Acts, Senate File 285.
2. Rewrite of Code Chapter 321J (Operating While Intoxicated). This recommendation was enacted in 2010 Iowa Acts, Senate File 431.
3. Create a robbery in the 3rd degree offense. The General Assembly amended the designation of the criminal offense from a robbery in the third degree to an aggravated theft and the recommendation was enacted in 2010 Iowa Acts, Senate File 2250.
4. Expungement of underage possession of alcohol offense in violation of Code Section 123.46 if the defendant incurs no other criminal offenses other than traffic offenses and the defendant is at least 21 years of age. This recommendation was enacted in 2010 Iowa Acts, House File 2233.



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5. Grant authority to a judge to extend a defendant's probation period if a violation of probation has been established. This recommendation was enacted in 2010 Iowa Acts, House File 2377.
6. Add the term "recklessly" to the class "D" felony offense for intimidation with a dangerous weapon in violation of Code Section 708.6. This recommendation was introduced by the Committee on Judiciary in House File 2373 but was not enacted by the General Assembly.
7. Classify any escape from custody in violation of Code Section 719.4(2) as a class "D" felony. This recommendation was introduced by the Committee on Judiciary in House File 2378 but was not enacted by the General Assembly.
8. Exempt from the definition of forcible felony an assault without intent to inflict serious injury but which results in serious injury in violation of Code Section 708.4(2). This recommendation was enacted in 2010 Iowa Acts, House File 2372.
9. Create a Public Safety Advisory Board within the Division of Criminal and Juvenile Justice Planning of the Department of Human Rights. The members of the board would consist of current members of the Criminal and Juvenile Justice Planning Advisory Council. The duties of the board would include analyzing the impact of current and proposed Criminal Code provisions relating to sentencing disparity, truth in sentencing, victims, proportionality, sentencing procedures, costs, and best practices. The recommendation also requires the board to review the collection of correctional data and to provide expertise and advice in formulating fiscal, correctional, and minority impact statements, and to be politically neutral. This recommendation was enacted in 2010 Iowa Acts, House File 2531 (Division XI).
10. Repeal cowl lamp violations for motor vehicles. This recommendation was enacted in 2010 Iowa Acts, House File 2288.
11. Develop a consistent definition of serious injury. This recommendation was enacted in 2010 Iowa Acts, House File 2374.
12. Move certain provisions of the criminal offense of abuse of a corpse from Code Chapter 709 to Code Chapter 714. This recommendation was enacted in 2010 Iowa Acts, House File 2392.
13. Repeal detention in a brothel violations. This recommendation was enacted in 2010 Iowa Acts, House File 2286.

## **XII. Materials Filed With the Legislative Services Agency**

The following materials listed were distributed at or in connection with the seven meetings or subcommittee meetings of the Criminal Code Reorganization Study Committee and are on file with the Legislative Services Agency. The materials may be accessed from the <Additional Information> link on the Committee's Internet web page:

<http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=211>



1. 1/14/2010 – Public Safety Advisory Board Bill.
2. 1/14/2010 – Robbery in the Third Degree Bill.
3. 1/14/2010 – Expunging Convictions Bill.
4. 1/14/2010 – Simulated Public Intoxication Bill.
5. 1/14/2010 – Extending Probation Bill.
6. 1/14/2010 – Intimidation with a Dangerous Weapon Bill.
7. 1/14/2010 – Escapes from Custody Bill.
8. 1/14/2010 – Assault Causing Serious Injury Bill.
9. 1/14/2010 – Serious Injury Bill.
10. 1/14/2010 – Cowl Lamps Bill.
11. 1/14/2010 – Detention in a Brothel Bill.
12. 1/14/2010 – Abuse of a Corpse Bill.
13. 1/14/2010 – Draft Proposal of Chapter 124 Penalty and Sentencing Provisions.
14. 1/12/2010 – Tentative Agenda – January 14, 2010, Meeting.
15. 10/29/2009 – Additional Specific Proposals for October 29 Meeting.
16. 10/29/2009 – Iowa State Bar Association – Public Intox and PULA Expungement Proposals.
17. 10/29/2009 – Iowa State Bar Association – Robbery III Proposal.
18. 10/29/2009 – Proposed Recommendations – October 29, 2009, Meeting.
19. 9/9/2009 – Minutes – Approved.
20. 9/8/2009 – Tentative Agenda – September 9, 2009, Meeting.
21. 9/2/2009 – Public Defender Proposals.
22. 9/2/2009 – Specific Crimes Proposals.
23. 9/2/2009 – Specific Crimes Recommendations.
24. 8/25/2009 – Public Safety Advisory Board Proposal by Judge Mullins.
25. 8/12/2009 – CJJP Handout.
26. 8/12/2009 – Senator Kreiman's Handout.



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27. 8/12/2009 – Alabama Legislation.
28. 8/12/2009 – Arkansas Legislation.
29. 8/12/2009 – Delaware Legislation.
30. 8/12/2009 – District of Columbia Legislation.
31. 8/12/2009 – Kansas Legislation.
32. 8/12/2009 – Louisiana Legislation.
33. 8/12/2009 – Maryland Legislation.
34. 8/12/2009 – Massachusetts Legislation.
35. 8/12/2009 – Missouri Legislation.
36. 8/12/2009 – Ohio Legislation.
37. 8/12/2009 – Oregon Legislation.
38. 8/12/2009 – Public Safety Advisory Board Proposal.
39. 8/12/2009 – Sentencing Commission or Council Information – Spreadsheet.
40. 8/12/2009 – Tennessee Executive Order.
41. 8/12/2009 – Tennessee Legislation.
42. 5/21/2009 – Minutes – Approved.
43. 5/21/2009 – Criminal Code Reorganization Study Committee.
44. 5/19/2009 – Tentative Agenda – May 21, 2009, Meeting.
45. 3/9/2009 – Tentative Meeting Notice – May 21, 2009, Meeting.
46. 2/2/2009 – Criminal Code Reorganization Study Committee.
47. 1/15/2009 – Minutes – Approved.
48. 1/9/2009 – Revised Agenda – January 15, 2009.
49. 12/9/2008 – Tentative Meeting Notice – January 15, 2009.
50. 12/4/2008 – Tentative Agenda – December 9, 2008, Meeting Rescheduled.
51. 11/20/2008 – National Center for State Courts – State Sentencing Commissions and Guidelines.
52. 11/19/2008 – Revised Meeting Notice – December 9, 2008.



53. 9/22/2008 – Thomas H. Miller (Attorney General Criminal Appeals Division) Criminal Attempt Liability in Iowa.
54. 9/15/2008 – Professor Jim Tomkovicz – Memo to Foundational Provision Subcommittee Members – Attempt, Solicitation, Conspiracy.
55. 9/8/2008 – Minutes – Approved.
56. 9/8/2008 – 1 – Proposals of Foundational Provision Subcommittee re: Actus Reus, Mens Rea, Mistake, Liability for Acts of Others.
57. 9/8/2008 – 2 – Explanation of Foundational Provision Proposals by Professor Jim Tomkovicz.
58. 8/25/2008 – Tentative Agenda – September 8, 2008.
59. 8/18/2008 – 1 – Follow-up Questions from Beth Lenstra.
60. 8/18/2008 – 2 – Answers to Beth's follow-up Questions.
61. 8/18/2008 – 3 – Jack O'Connell's Answers to Beth's Follow-up Questions.
62. 7/15/2008 – AG – Have piecemeal revisions degraded Iowa's Criminal Code?
63. 7/15/2008 – County Attorney's Association Summary of Proposals.
64. 7/8/2008 – Link to Professor Tomkovicz's website.
65. 7/3/2008 – Actus Reus-Mens Rea Memo (Professor Jim Tomkovicz).
66. 6/3/2008 – Revised Agenda – June 3, 2008.
67. 6/3/2008 – Minutes – Approved.
68. 5/29/2008 – Tentative Agenda – June 3, 2008.
69. 11/7/2007 – Criminal Code Reorganization Study Committee.
70. 10/30/2007 – Minutes – Approved.
71. 10/30/2007 – Revised Agenda – October 30, 2007.
72. 10/23/2007 – October 30, 2007 – Tentative Agenda.
73. 9/25/2007 – Contact Information for Legislative Staff Assigned to this Committee.
74. 9/24/2007 – Minutes – Approved.
75. 9/24/2007 – Adopted Rules List of materials.
76. 9/21/2007 – September 24, 2007 – Agenda.